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LETTER DATED 10 MAY 1996 FROM THE PERMANENT REPRESENTATIVE OF MOROCCO TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit to you a memorandum on the question of Western Sahara and should be grateful if you would have it circulated to the members of the Security Council and issued as a document of the Council.

(Signed) Ahmed SNOUSSI
Ambassador
Permanent Representative

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Annex

With the Secretary-General's report on Western Sahara due to be submitted to the Security Council in a few days, Morocco would like to convey to the members of the Council its concern over the stalemate in the referendum process.

In this connection, it would like to recall that the Secretary-General, in paragraph 2 of his report of 24 November 1995 (S/1995/986), clearly indicated that "the basic obstacle to continuing and completing the identification process relates to certain tribal groups and to persons not resident in the Territory in whose identification the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO) does not agree to participate ...".

That refusal, which is the origin of the current stalemate, is fully inconsistent with the right of all duly registered persons to identification, a right established by the settlement plan and a right to which the various reports of the Secretary-General have constantly drawn attention.

The settlement plan (S/22564, para. 20) mandated the Identification Commission to consider "applications from persons who claim the right to participate in the referendum on the grounds that they are Western Saharans and were omitted from the 1974 census".

The annex to the Secretary-General's report of 19 December 1991 (S/23299), which concerned the tasks of the Identification Commission, reaffirmed the right of identification of Saharans who were omitted from the 1974 census, but also stated: "It is recognized by the parties and the tribal chiefs that the 1974 census did not include all the Saharans from the Territory. On the one hand, a number of Saharans present in the Territory, whether or not they possessed a national identity document, were not contacted by the census teams, and, on the other hand, part of the population of the Territory lived, and still lives, outside Western Sahara, for a variety of reasons" (ibid., annex, para. 15).

It should also be recalled that, in its final communiqué, the meeting of tribal chiefs, organized by the United Nations in June 1990, while noting "the imperfections and inadequacies" of the 1974 census, recognized the right of every Saharan, whether or not resident in the Territory, to participate in the referendum.

The various reports of the Secretary-General have always reaffirmed that right. Accordingly, in paragraph 3 of his report of 24 November 1995 (S/1995/986), the Secretary-General asserted: "In my report of 8 September 1995 (S/1995/779), I stated that the United Nations Mission for the Referendum in Western Sahara (MINURSO) had an obligation to consider all applications which had been correctly submitted". Paragraph 28 of the report of 19 January 1996 (S/1996/43) again reaffirmed that obligation of MINURSO in the following terms: "... the Commission is required to process all the remaining applications on that basis and indeed intends to do so".

In December 1995, Morocco noted with much consternation the Security Council's reluctance concerning the Secretary-General's recommendations for

reviving the identification process. According to his recommendations, "the absence of a sheikh, representative or observer will not prevent identification from proceeding". Those proposals, which are consistent with the settlement plan, could have led to a resumption of the identification process.

The main reason for this obstructionist opposition by the Frente POLISARIO is surely its belief that it would be defeated if the process functioned normally and according to the rules established and accepted by the parties.

In fact, immediately before the Frente POLISARIO suspended its participation in the identification process, some 233,487 applications had been processed; of these, 176,533 came from the Moroccan side, while only 42,468 came from the Frente POLISARIO side.

The United Nations, which is responsible for implementing the settlement plan and interpreting its provisions, maintains that anyone who has submitted an application is an applicant and is entitled to be identified by means of a neutral and objective procedure which is "firstly, to establish the personal identity of the applicant and, secondly, to determine whether he or she qualified for inclusion in the electoral roll under one of the five eligibility criteria. Bringing a person to be identified [does] not prejudge the situation" (emphasis added; S/1995/986, para. 3).

The Frente POLISARIO is opposing the right of many applicants to whom it refers as though they were already authorized to participate in the referendum. Such an approach should not be dismissed out of hand, particularly as it could make it possible to dispense with the identification phase for the remaining applicants. It should in fact be given serious consideration if the Frente POLISARIO persists in its refusal to identify applicants whose Saharan credentials it contests.

The Frente POLISARIO, by deciding to oppose the identification procedure even though it has no power to do so, and even though this responsibility is vested solely in the Identification Commission, did not fulfil its obligation to cooperate with MINURSO, and the Security Council should have exercised its prerogatives and taken appropriate measures against it.

Instead, in December 1995 the Council chose to abandon a draft resolution (which had been issued in provisional form) endorsing the Secretary-General's recommendations, thereby setting an unfortunate precedent: nothing can be done without the agrement of both parties, even though the settlement plan does not demand their cooperation. This sent a message of encouragement to the Frente POLISARIO and does much to explain its obstinate refusal to participate in the process so long as its conditions are not met.

The responsibility of the Frente POLISARIO for this stalemate having thus been clearly established, the Security Council should have drawn the obvious conclusions and taken appropriate measures. We had hoped that the Security Council would use its authority to compel the recalcitrant party to respect the settlement plan and abide by the Secretary-General's proposals. We are now counting on the Council to explain to that party that it is violating the peace plan and that it cannot impose its law on the United Nations by choosing to

block this process and by giving itself the right to determine whether properly registered persons can or cannot be identified. Identification is a prerogative of the United Nations which is exercised by the Identification Commission under the authority of the Secretary-General. Stipulating the terms on which it will participate in the work of the Identification Commission constitutes a genuine challenge to which the international community must respond.

When the other party realized, as the settlement plan was being implemented, that the referendum was not going to be tailored to its specifications, it decided to use every means to extricate itself from the process. That party is once again invoking the principle of transparency, although without conviction. But let us return to the settlement plan. The plan contains no provision for an initial printing of the lists because both parties recognized on their own, and rightly so, that doing so would generate a host of new disputes on both sides which would be likely to prolong the already lengthy period of time allotted for identification.

Everyone now realizes that the notion of the 1974 census, so often cited by the other party, has run its course. The same party chose to misinterpret it when it came to identifying its so-called leaders as "Abdelaziz" and "Bachir", but not in the case of other applicants on the basis of the same criteria recognized by United Nations resolutions.

We were greatly surprised when, in December 1995, the Security Council appeared to give in to the pressure exerted on it, as a number of letters addressed to the Council on the subject will readily attest (letters Nos. NY/OUA/POL/1/95 of 6 December 1995, S/1995/1011 of 6 December 1995 and NY/OUA/POL/1/95 of 10 December 1995).

In the face of this stalemate, the Security Council might be tempted to seek other solutions that could jeopardize the settlement plan. Morocco, which is an avid supporter of the principle of the peaceful settlement of disputes, has taken the initiative of proposing the holding of a referendum to allow the population of Western Sahara to exercise its right to self-determination.

A settlement plan has been drawn up. It calls for the holding of a referendum according to rules accepted by the parties and approved by the Security Council, and which the Secretary-General is responsible for carrying out. This settlement plan provides for no alternatives.

The situation in which we find ourselves today is quite clear. One of the two parties, and it is not Morocco, has thwarted the implementation of the settlement plan and given itself the right of veto and sole authority over operations which are the competence of the Secretary-General. Any solution other than a return to the Security Council's exercising of its authority in the matter can only signify a desire to fulfil conditions that are contrary to the settlement plan. As the other party seeks a custom-made settlement, it is up to the Security Council to remind it that there are a settlement plan, resolutions and rules which must be respected.

The Kingdom of Morocco, for its part, wishes to reaffirm solemnly that it respects the settlement plan and that it has done all it can to facilitate the

plan's implementation. Its continued cooperation is confirmed in all United Nations reports. Its desire is to see the Security Council, to whom this task has been entrusted, ensure respect for the settlement plan, which continues to be the first and final rule. The Council has an opportunity to go beyond its hesitations of December 1995, which gave the other party the illusion that it had a right of veto, despite the fact that the roles of the parties are clearly spelt out in the plan.

We strongly hope that we will not come to regret that the efforts made, the energy spent and the resources committed by the international community did not lead to the settlement of the question of Western Sahara and the end of the suffering of our Saharan brothers in the Tindouf camps for more than 20 years.

Lastly, we hope that the international community will not abandon these efforts.